



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR DIRECTOR, FIELD OPERATIONS - EAST
DIRECTOR, FIELD OPERATIONS - WEST
DIRECTOR, TECHNICAL GUIDANCE
DIRECTOR, APPEALS PROCESSING SERVICES

FROM: Diane S. Ryan /s/ *Diane S. Ryan*
Director, Technical Services

SUBJECT: Interim Guidance - Disqualified Employment Tax Levies (DETL)
and Post Levy Collection Due Process (CDP) Rights for DETLs

This memorandum provides interim guidance for working CDP hearing requests where Collection serves a Disqualified Employment Tax Levy (DETL) and the taxpayer requests a post-levy DETL Collection Due Process (CDP) hearing.

Section 8243(a) of the "Small Business and Work Opportunity Tax Act of 2007" amended IRC 6330(f) to permit levy without first giving a taxpayer owing employment taxes a pre-levy CDP notice if the levy is a "disqualified employment tax levy."

A "disqualified employment tax levy" as described in new IRC 6330(h) is a levy served to collect the employment tax liability of a taxpayer if that taxpayer or a predecessor requested a CDP hearing under IRC 6330 for unpaid employment taxes arising in the two-year period prior to the beginning of the taxable period to be collected by levy. If a DETL is served, then the taxpayer is given an opportunity for "the hearing described in this section within a reasonable period of time after the levy." The taxpayer may seek judicial review in Tax Court of the determination resulting from the IRC 6330(f) post-levy hearing.

The attached procedures provide guidance to identify accounts that meet the criteria for DETL issuance and actions Appeals will take on a post-levy DETL CDP hearing request.

For implementation of DETL, Collection created a new post-levy CDP letter, [L1058D](#), and made the following CDP Tracking System code enhancements that will, separately, identify the type of hearing request:

- TC 971 AC 630 and TC 971 AC 631 - New action codes for a CDP or Equivalent levy hearing request.
- TC 971 AC 275 and TC 971 AC 278 - Revised action codes for a CDP or Equivalent lien hearing request.

The procedures attached to this memorandum are effective from the date of this memorandum and will be included in the next revision of IRM 8.22, Collection Due Process. Please disseminate this information to all processing and technical employees and their managers.

If you have any questions, please contact Mary Howard, Acting Director, Tax Policy and Procedure at (202) 435-5659 or Janis Suchyta, CDP Program Analyst at (313) 628-3003.

Attachment

cc: www.irs.gov

Attachment

1. The “Small Business and Work Opportunity Tax Act of 2007” modified the collection due process (CDP) procedures for employment tax liabilities by amending IRC 6330(f) to permit levy without first giving a taxpayer owing employment taxes a pre-levy CDP notice if the levy is a “disqualified employment tax levy (DETL).”
2. A tax period may be collected by a DETL if the following requirements are satisfied:
 - a. There is an employment tax liability.
 - b. The levy is for taxes owed by a taxpayer or a predecessor **who previously requested a CDP levy hearing**.
 - c. The prior timely CDP hearing request properly included at least one unpaid employment tax period that ended during the two-year period before the period to be levied (two-year look-back period).

Note: Predecessor CDP hearing requests will not be used as a basis of a DETL until the term “predecessor” is defined in the CDP regulations.

3. Collection may issue a DETL if the tax period(s) to be collected meet(s) the above requirements. Even if a tax period qualifies for a DETL, Collection has the option to issue a DETL or provide the taxpayer with a pre-levy CDP notice. Collection may issue a pre-levy CDP notice if no IRC 6331(d) notice (CP 504) has been issued or there has been no contact with the taxpayer within the last 180 days.
4. **Identifying Employment Tax Liabilities:** Employment taxes are defined as FICA, FUTA, and withheld income tax. It includes taxes reported on:
 - Form 941 (MFT 01)
 - Form 943 (MFT 11)
 - Form 944 (MFT 14)
 - Form 945 (MFT 16)
 - Form 940 (MFT 10)
 - Form CT-1 (MFT 09)
5. **Identifying prior CDP levy hearing requests:** The “prior” request refers to a timely, processable CDP levy hearing request. A “prior” levy hearing request includes timely requests that were withdrawn in Collection or Appeals.

A post-levy request for a CDP hearing made in response to a post-levy CDP notice L1058D, state refund L1058, or jeopardy levy L1058 also can constitute a prior CDP levy hearing request as a basis for a DETL.

Neither an equivalent levy hearing request nor an untimely CDP levy hearing request may be included as a prior hearing request to identify a “prior” request.

Use one or more of the following to identify a prior timely CDP levy hearing request:

- a. IDRS cc TXMODA: Look for TC 971 AC 630, which shows the taxpayer (TP) made a CDP levy request for that module.

Note: TC 971 AC 630 will be available beginning 3/17/2008.

- b. ACDS case summary card.

- c. IDRS cc CDPTRT – identifies type (timely or equivalent lien and/or levy), MFT, tax modules, and date hearing requested. See [IRM Exhibit 2.4.57-1](#) for information on cc CDPTRT.

Note: A TC 971 AC 276 on a TXMODA means that the CDP hearing request was withdrawn in Collection AND Collection did not forward the hearing request to Appeals. Where a TC 971 AC 276 is on a module, you must also review IDRS command code CDPTRT to determine whether the withdrawn request was a lien or levy request. The withdrawn request must have been for a “levy” hearing.

Note: The period(s) listed by the taxpayer on the “prior” CDP levy hearing request used as a basis of a DETL must have been listed on a CDP levy notice preceding the request. The presence of a TC 971 AC 069 on a TXMODA with a date earlier than the DETL confirms that the period was listed on a prior CDP levy notice.

6. **Two-year “look-back” period:** The “prior” hearing request must have involved employment taxes arising within the two-year period before the beginning of the taxable period for which the DETL is served. The two-year look-back period is measured from the beginning of the period for which the DETL is served.

If the taxpayer requested a CDP levy hearing for employment taxes that arose during the two-year look-back period, the period qualifies for a DETL.

Example 1: The taxpayer owes employment taxes for the fourth quarter of 2005. A CDP levy notice listing this unpaid quarter was issued and the taxpayer timely requested a CDP levy hearing. The taxpayer pyramids an additional liability for the second quarter of 2006. This period qualifies for a DETL because the taxpayer had requested a prior levy hearing for liabilities arising during a quarter (fourth quarter of 2005) that ended (12/31/2005) within two years before the beginning of the quarter to be levied (04/01/2004 through 04/01/2006).

Example 2: The taxpayer owes employment taxes for the first quarter 2004. A CDP levy notice listing this unpaid quarter was issued and the taxpayer timely requested a CDP levy hearing. The taxpayer accrues an additional liability for the second quarter of 2006. This period does not qualify for a DETL because the taxpayer had requested a prior levy hearing for liabilities arising during a quarter (first quarter of 2004) that ended (03/31/2004) outside the two-year look-back period (04/01/2004 through 04/01/2006).

Note: The grid in Exhibit 1 may be used to determine whether the tax period listed on the DETL qualifies to be collected by DETL.

7. Collection will issue a post-levy CDP notice (L1058D) within 10 days after the issuance of a DETL. The notice shall be given to the taxpayer in person, left at the last known address, or sent by certified mail to the taxpayer's last known address.

Note: The post-levy notice is not required to be sent with return receipt requested.

8. Collection will process and forward to Appeals the DETL post-levy hearing request in the same manner as other CDP hearing requests. Collection will:
 - a. Prepare [Form 12153-A](#) with all pertinent information.
 - b. Fax Form 12153-A to Compliance Case Processing (CCP) to establish the hearing request on the CDP Tracking System and update to Stage 3.
 - c. Route cases to Appeals using APS Case Routing by State/Zip.
9. APS will card in CDP DETL hearing requests following established procedures for carding in CDP cases. See [IRM 8.22.1](#).
10. Settlement Officers (SO) will follow procedures in [IRM 8.22.2.2.4](#) for the review and documentation requirements of DETL hearing requests. Current standards for review and documentation of CDP cases apply to DETL hearing requests. DETL hearing requests will receive priority consideration. See [IRM 8.22.2.2.6.4](#).

Note: Identify post-levy CDP hearing requests with feature code "PY".

11. The SO must verify that **each** period listed on the DETL qualifies for collection by DETL using requirements from (2) above. The SO must also verify that the tax period on the prior CDP levy hearing request that ended during the two-year look-back period was listed on either a pre- or post-levy CDP Levy Notice (L1058/L1058D) preceding the prior CDP levy hearing request. This can be verified by TC 971 AC 069 on a TXMODA.
12. If the tax period meets the criteria for issuing a DETL, the taxpayer should have been issued the Notice of Intent to Levy under IRC 6331(d). In most instances, this is the CP 504 notice or the "Status 58" notice. If a CP 504 notice (or any

other IRC 6331(d) notice) has not been issued, and the DETL attached the taxpayer's property, then the levy was illegal and, unless the taxpayer otherwise consents, the levy must be released and any levied property should be returned in accordance with IRC 6343(d) (see note for applicable time limit). However, the L1058D is valid. Under these circumstances, the L1058D should be treated as a pre-levy notice under IRC 6330(a). (For future levies, the L1058D also satisfies the requirements of IRC 6331(d).)

Note: Specific property attached by illegal levy other than money must be returned at any time. Illegally levied money must be returned, but only if the taxpayer properly requests return of the money before the expiration of 9 months from the date of levy. Money must also be returned if the IRS determines within the 9-month period after the levy takes place that the levy was illegal. See Treas. Reg. 301.6343- 3 (e) for a more complete explanation.

13. A hearing request made in response to the DETL and the post-DETL L1058D may include a tax period that is **not** on the L1058D. The tax period not on the L1058D may have been listed on a prior CDP levy notice issued to the taxpayer. This can be verified by TC 971 AC 069 on a TXMODA.
 - If the taxpayer was issued a prior CDP levy notice, the taxpayer is not entitled to a CDP hearing for that period with the current CDP hearing. See IRM 8.22.2.2.21, Equivalent Hearings, to determine if the period may qualify for an EH. There is no need to confirm that a DETL was properly issued.
 - If the taxpayer was not issued a prior CDP levy notice, then the tax period is properly subject to the hearing. The period was mistakenly omitted from the L1058D.
14. A separate determination must be made for each DETL period to determine if the period qualifies for the DETL.
15. If Appeals determines that none of the periods qualify for the DETL the SO will take the following actions:
 - a. Notify the Revenue Officer (RO) via encrypted email (with a "cc" to the RO Group Manager) to immediately release the levy. Provide the applicable, explanation from the following bulleted list why the period(s) do not qualify for the DETL and include the paragraph after the bulleted list.

Re: (Name of taxpayer/TIN)

Disqualified Employment Tax Levy (DETL) dated:

Disqualified Employment Tax Levy notice (L1058D) dated:

The tax and tax period(s) on your DETL do not qualify for DETL status for the following reason(s):

- “type of tax” is not employment tax;
- taxpayer did not request a prior, timely, CDP Levy hearing;
- the prior timely, CDP Levy hearing request did not involve any employment tax period ending within the 2-year look-back period;
- the period on the prior, timely hearing request that ends within the 2-year look back period was not listed on a prior pre- or post-levy CDP Levy Notice L1058/L1058D).

The DETL must be immediately released. If you would like to discuss, I must invite the taxpayer (or the authorized rep) to participate to avoid a prohibited ex parte communication. I will hold a pre-levy hearing on the period(s) you will release from the DETL:

MFT/taxperiod(s):

Note: Treat the post-levy CDP L1058D Notice as a pre-levy CDP Notice. Follow established procedures in scheduling a pre-levy conference.

Note: If the taxpayer brings to Appeals’ attention that the Service received (or will receive) specific property or monies from the illegal levy, ask the taxpayer if he /she wants the levied property or money returned. Remember: money may not be returned if the request for its return is made more than 9 months after the levy takes place. See Treas. Reg. 301.6343- 3 (e) for a more complete explanation. If the taxpayer requests return of the illegally-levied property or money (and section 6343 permits return of the money), the SO will instruct the field to take necessary steps to return the levied property or funds in the “Remarks” section of the CDP Form 5402. The SO will also document in the case activity record the conversation he /she has with the taxpayer (or the POA) regarding the levied property or money. Clearly document if the taxpayer agrees to the Service retaining the property or money.

16. If Appeals determines that one or more of the periods do not qualify for the DETL, the SO will take the following actions:

- a. Notify the RO via encrypted email (with a “cc” to the RO Group Manager) to immediately issue a partial release of the levy. In the email, provide a brief explanation (see 15(a)).
- b. Treat the post-levy CDP Notice as a pre-levy CDP Notice for the periods that do not qualify for DETL.
- c. Follow established procedures in scheduling a conference, which will be both a pre- and post-levy CDP levy hearing.

17. If all the periods on the DETL qualify for DETL status, continue working the case following policy established in IRM 8.22.2.

18. Ensure that the RO requested TC 971 AC 069 on the DETL hearing request period(s). TC 971 AC 069 is required on all periods even if the period is determined to have been improperly included on the DETL and is heard as a pre-levy CDP notice. The TC 971 AC 069 is a manual input with the issuance of a DETL vs. a systemic input when a pre-levy CDP notice is issued. Where the RO failed to add TC 971 AC 069, include instructions in the "Remarks" section of the CDP Form 5402 to input the TC 971 AC 069.
19. A DETL may be served to collect DETL tax periods during a timely requested pre- or post-levy CDP hearing or judicial review of such hearing. If a DETL is served during a CDP hearing, the SO will determine if the DETL is permitted by using the procedures described above.

Note: Do not use the request for the current hearing to determine if a DETL is permitted during the hearing or ongoing judicial review.

20. APS will follow closing procedures in IRM 8.22.1 where the SO issues either a Notice of Determination or secures a Form 12257.

Exhibit 1: Prior TIMELY CDP Levy Hearing Request (ACDS Case Summary Card):

TP:	WUNO:	SOURCE:	DO:	PART: 1
TIN:		PROJCD:	MFT: 01	AO:
	ACTIVITY:	SRCSYS: ACDS	TYPE: DPLV	ASNDATE: 05/01/2006
Location: F	PRIUSCD: 205	FEATRCD:		REQAPPL: 04/08/2006
CAT: CDP-	ABSSIND:	CDPSegCD:		RECDATE: 05/01/2006
DKTNO:	DC OFFICE:	ATTORNEY:		CREATED: 05/01/2006

E 200412N SUSPN 7 296- - 0 00 0

E 200506N SUSPN 7 296- - 0 00 0

(a)	(b)	(c)	(d)	(e)
PERIODS ON DETL LEVY Tax Type and Pd Ended:	Ending date of latest employment tax period "properly" (TC971 AC 069 on module) included in prior hearing request	BEGINNING DATE FOR DETL TAX PERIOD in column (a) and ENDING DATE FOR TWO-YEAR LOOK- BACK PERIOD	BEGINNING DATE FOR TWO-YEAR LOOK-BACK PERIOD FOR DETL TAXES (Column C minus 2 years)	Does date in column (b) fall between the dates in columns (c) and (d)? (Y/N)
941 200703	6-30-2005	1-1-2007	1-1-2005	Y
941 200509	6-30-2005	7-1-2005	7-1-2003	Y
941 200709	6-30-2005	7-1-2007	7-1-2005	N (none of the prior hearing requests periods on the CSC fall between 7-1-2005 and 7-1-2007).
940 200712	6-30-2005	1-1-2007	1-1-2005	Y
941 200506	200506 was on prior hearing request *Check to ensure 200506 was on prior L 1058 (TC 971 AC 069)	n/a	n/a	n/a (period was on an earlier L1058)

Column A = Type of Tax and Tax Period(s) on the DETL levy.

Column B = The prior timely CDP levy hearing request must include at least one unpaid employment tax period that ended during the two-year period before the beginning of each period(s) for which the levy is served.

Note: The tax period on the "prior CDP levy hearing request" must have been listed on either a pre or post-levy CDP Levy Notice (L1058/L1058D) – verified by TC 971 AC 069.

Column C = Beginning Date for DETL Tax Period (which is the same as the ending date for the two-year look-back period).

Column D = Beginning date for the two-year look-back period (Column C minus 2 years).

Column E = Does date in column (b) fall between the dates in columns (c) and (d)?

(Y/N). If yes, the tax period in column (a) can be collected by DETL. If no, the tax period in column (a) cannot be collected by DETL.